



VERIZON LEGAL DEPARTMENT
PATENT MANAGEMENT GROUP
1320 N. COURTHOUSE ROAD
9TH FLOOR
ARLINGTON VA 22201-2525

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APR 24 2009

OFFICE OF PETITIONS

In re Application of
Michael Anthony Dean
Application No. 09/594,100
Filed: June 14, 2000
Attorney Docket No.: 99-422

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ON PETITION

This is a decision on the petition filed April 7, 2009, to withdraw the holding of abandonment for the above-identified application, which is treated under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

This application was held abandoned on February 13, 2009 and a Notice of Abandonment was mailed March 2, 2009, for the appellant's failure to file a proper reply after the Board of Patent Appeals and Interferences (Board) decision rendered December 12, 2008.

Petitioner asserts that no response was required since the Decision on Appeal Affirmed-In-Part.

A review of the record reveals that while while the Board reversed the rejection of claims 1-10 and 21-33, they did not indicate that the reversed claims were allowable—just that the rejections were reversed. The section of the MPEP cited in the petition (MPEP **1204.06(II)**) deals with a situation where claims are indicated as allowable prior to the claims going up to the Board and after the Board decision, the claims that were indicated allowable were issued while the sustained claims were cancelled. This situation does not apply to this application.

In the instant matter, no claims were indicated as allowable prior to the appeal process, thus, after the Board's decision, even though the Board reversed some claims, there are no claims that have been indicated as allowable.

The applicant's option therefore was to either pursue the sustained claims by appealing the Board's decision or replying to the Board's decision. The applicant did not do either thing within the two months deadline, therefore the application was appropriately abandoned.

In view of the above, and since the arguments presented and evidence submitted do not substantiate a finding that the response was timely filed, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

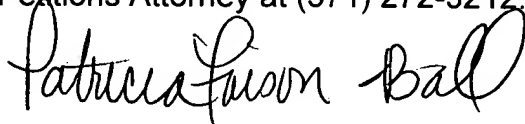
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large, prominent "P" and "B".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions